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UNCLAS SECTION 01 OF 04 WELLINGTON 000136

SIPDIS

SENSITIVE
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STATE FOR EB/IPE-CLACROSSE AND EAP/ANP-DRICCI
STATE PLEASE PASS TO USTR FOR JCHOE-GROVES
STATE PLEASE PASS TO USPTO FOR JURBAN
STATE PLEASE PASS TO LOC FOR STEPP
COMMERCE FOR JBOGER AND ABENAISSA/4530/ITA/MAC/AP/OSAO

E.O. 12958: N/A
TAGS: [KIPR](#) [ETRD](#) [ECON](#) [PREL](#) [NZ](#)
SUBJECT: YEAR 2006 SPECIAL 301 REVIEW - NEW ZEALAND

REF: A. STATE 14937

[1](#)B. WELLINGTON 40
[1](#)C. 05 WELLINGTON 334

(U) Sensitive but unclassified -- for U.S. government channels only.

Summary

[1](#)1. (SBU) Post recommends that New Zealand remain off the Special 301 List. Although the government has been relatively slow in updating its intellectual property laws, it is moving in the right direction. Moreover, New Zealand in general already provides adequate and effective protection of intellectual property rights.

[1](#)2. (SBU) While the pharmaceutical industry urges that New Zealand be placed on the list, post continues to believe that the industry's restricted access to New Zealand's market stems less from a failure to protect intellectual property and more from the government's anti-competitive drug-purchasing practices. In addition, we believe a Watch Listing would not improve the industry's prospects. And, while the music industry has legitimate concerns about New Zealand's proposed exceptions to copyright protection, the industry has noted that ongoing discussions with the government may yet yield some of the changes the industry seeks.

IPR in general

[1](#)3. (U) Aside from a bill to establish a registration system for geographical indications for wines and spirits, no legislation related to intellectual property rights (IPR) was introduced in the New Zealand Parliament in 2005. However, New Zealand has several bills in the wings that would improve its IPR regime. With few exceptions, the government is not rolling back its protections of intellectual property.

[1](#)4. (U) Proposed amendments to the Copyright Act 1994, announced in June 2003, are intended to ensure that the act reflects developments in digital technologies and international developments in copyright. The amendments have not yet been introduced in Parliament, and the timetable for their submission is unknown. A draft Patents Bill was released in December 2004. It would replace the Patents Act 1953 and is intended to bring New Zealand's patent law into closer conformity with international standards. Public

submissions have been received, and the bill is being revised.

¶5. (U) The Geographical Indications (Wine and Spirits) Registration Bill would repeal and replace the Geographical Indications Act 1994, which never came into force. The bill, introduced in Parliament in June 2005, would establish a registration system for geographical indications for wine and spirits. It would put New Zealand in closer alignment with the TRIPS agreement by using the agreement's definition for a "geographical indication" and by clearly limiting registration to geographical indications for wine and spirits only.

¶6. (U) The Trade Marks Amendment Act 2005, containing minor and technical changes to the Trade Marks Act 2002, came into force in December 2005. The amendment act requires that the applicant for registering a trademark be the "owner" of the mark and clarifies provisions for revoking a trademark registration for non-use.

¶7. (U) Meanwhile, New Zealand law continues to allow parallel imports of certain copyrighted goods, which some U.S. industries say complicates efforts to detect and combat piracy and erodes the value of their products in the New Zealand market. A ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release -- enacted in October 2003 -- is scheduled to sunset in 2008, unless extended.

The pharmaceutical issue

¶8. (SBU) The pharmaceutical industry has a number of legitimate complaints about its treatment in the New Zealand market, and we continue to press for an improvement in this

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situation. However, the industry's concerns are not, at heart, IPR problems. Rather, they are related to the process by which the government decides which medicines are subsidized and to the government's limited budget for drug purchases (ref B). Post believes this market-access barrier should be dealt with as such and not treated as a failure to protect intellectual property. Even the industry's trade association, Researched Medicines Industry Association of New Zealand (RMI), concedes that the government's practices do not violate its TRIPS commitments.

¶9. (SBU) The government also has mostly defined the issue as a matter of ensuring affordable pharmaceutical prices for all New Zealanders. Listing the country on the Watch List would only enable the government to claim to the New Zealand public that its policies protect the population against an avaricious pharmaceutical industry. RMI also believes that the likelihood of changes in the drug-purchasing system has increased over the past year, especially with the government's agreement after the September 17 elections to review its medicines policy (ref B).

¶10. (SBU) It is true that the government's draft Patents Bill fails to meet two of the industry's objectives in New Zealand: (1) It does not allow patent protection for diagnostic, therapeutic and surgical methods involving the treatment of humans, as allowed under the TRIPS agreement, and (2) it fails to extend the effective patent life of drugs. The effective patent life (the period following marketing approval, when patent holders have exclusive control of their inventions) averages seven years in New Zealand. Moreover, the draft bill leaves in place an amendment to the Patents Act that allows competitors to begin the process required for regulatory approval of a generic product while a proprietary drug still is under patent.

¶11. (SBU) Although the draft is unsatisfactory, we believe that listing New Zealand because of the draft legislation would reduce our ability to influence the bill's final

provisions. We continue to press New Zealand government officials with our concerns with the draft bill.

Format- and time-shifting

¶12. (U) Proposed amendments to the Copyright Act 1994 include provisions that would allow format-shifting, or the duplication of sound recordings to another format for a purchaser's private use without the copyright owner's permission. The amendments also would extend to all communication works a provision in the Copyright Act that permits time-shifting, or the recording of a broadcast or cable program for private use solely for the purpose of viewing or listening to the recording at a more convenient time or for making a complaint.

¶13. (SBU) The industry contends that such exceptions to copyright protection send the wrong message to consumers, undermine efforts to curb unauthorized copying of CDs, discourage innovation and cost the industry in sales and profits. The government and industry continue to discuss these exceptions, and the government has said it would be flexible on this issue and aim for a conclusion satisfactory to the industry, while also addressing the government's concerns regarding fairness to consumers. We will continue to encourage this dialogue. With such discussions ongoing, we believe a Special 301 listing over this issue would be premature and counterproductive.

Optical media piracy

¶14. (U) While New Zealand does not have any regulations specifically addressing optical media manufacturing, the Copyright Act 1994 -- including protections and sanctions for copyright infringement -- applies to optical media. We are not aware of significant problems with optical media piracy in New Zealand.

Use/procurement of government software

¶15. (U) New Zealand has no specific guidelines relating to government use or procurement of software, but it does have general rules pertaining to protection of intellectual property in the public sector.

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TRIPS compliance

¶16. (U) The draft Patents Bill would help align New Zealand's patent law with that of other developed countries. The draft would keep the maximum patent term at 20 years, but would tighten the criteria for issuing a patent, requiring that a patentable invention be new anywhere in the world (instead of new in New Zealand), involve an inventive step and be useful.

The proposed amendments to the Copyright Act 1994 aim to ensure the act encompasses developments in digital technology. For example, the definition of "copying" would be clarified to include digital works. A draft Plant Variety Rights Amendment Bill, released in August 2005, is intended to give rights owners enhanced exclusive rights over their protected plant varieties, in line with the 1991 revision of the International Convention for the Protection of New Varieties of Plants. The amendment aims to address significant advances in plant breeding techniques, as well as international developments. The Trade Marks Amendment Act 2005, which came into force in December 2005, contains minor and technical changes to the Trade Marks Act 2002 (see Paragraph 5).

¶17. (U) New legislation introduced in Parliament in 2005 included the Geographical Indications (Wine and Spirits) Registration Bill (see Paragraph 5).

¶18. (U) We are unaware of any new legislation related specifically to domestic protection of traditional knowledge

or expressions of folklore. However, the proposed changes to the Patents Act 1953 include a provision to set up a Maori consultative committee that would advise the patents commissioner on whether a patent application pertains to an invention that is derived from Maori traditional knowledge, indigenous plants or animals and whether the commercial exploitation of such an invention would be contrary to Maori values.

¶19. (U) Under the Medicines Amendment Act 1994, New Zealand provides data exclusivity -- a period during which government officials respect the confidentiality of data submitted to them in applications for marketing approval for medicines -- for five years. Such data exclusivity does not extend to new uses or formulations of old active ingredients.

¶20. (U) New Zealand Customs can confiscate and destroy pirated products if the holder of the trademark or copyright has requested that Customs detain the goods. That request is valid for five years and can be renewed. However, Customs does not have the power to prosecute. Rights holders can pursue relief through civil lawsuits and have 10 working days to do so. Otherwise, the goods are released or, at the importer's request, destroyed. The provisions apply only to trademarks and copyright registered in New Zealand. Customs has no authority to detain infringing IP goods from being exported. Customs detained 101,734 goods for bearing infringing marks or signs in 2005, down from a 10-year high of 142,055 in 2001. However, the number of shipments investigated by Customs has risen steadily over the last decade, from one in 1995 to 683 in 2005. Almost all the infringing goods originated in Asia, particularly China, and most of the intercepted and investigated goods were clothing, footwear and headwear. The number of pirated CDs and DVDs intercepted by Customs has declined sharply, after peaking in early 2005. It appears that CDs and DVDs increasingly are being copied to order within New Zealand, making detection of local production difficult. The New Zealand Department of Internal Affairs has had some success, however, in stemming domestic sales of pirated and counterfeit products by closing down e-auction sites. In January, 97 sites were shut down.

Enforcement

¶21. (U) The New Zealand government is committed to adequately and effectively enforcing its IPR-related laws, as reflected by the creation of new criminal offenses for trademark infringements and the increases in penalties for copyright infringements under the Trade Marks Act 2002, which entered into force in August 2003. In most instances, the government responds to complaints raised by rights holders rather than initiating action against IP infringers. Those complaints have been relatively few, and so the government does not

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track enforcement-related statistics, such as civil and criminal penalties. The government lacks a central body to coordinate the sharing of information on illegal IP activities and enforcement efforts.

WCT/WPPT

¶22. (U) Amendments to the Copyright Act 1994, proposed in June 2003, would make the act more consistent with the World Intellectual Property Organization Copyright Treaty (WCT) and Performances and Phonograms Treaty (WPPT). If the proposed amendments are passed, the government would decide whether to accede to the WCT and WPPT.

Training

¶23. (U) New Zealand has close relations with the Pacific Islands, providing them with disaster relief, development aid and, in a few cases, peacekeeping assistance. It could play a larger role in helping the Pacific Islands strengthen their IPR regimes. At least one New Zealand program aims to combat

piracy in Pacific Island nations (ref C). New Zealand might benefit from "training the trainer"-type programs, equipping New Zealanders to help the islands improve IPR enforcement.
McCormick